

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**CRA No. 890 of 2021**

1. Dayashankar Jaiswal S/o Keshwar Sao, aged about 46 years
2. Shubham Jaiswal S/o Dayashankar Jaiswal, aged about 26 years (wrongly stated as Dashshankar)
3. Navin Kumar Jaiswal S/o Dayashankar Jaiswal, aged about 25 years (wrongly stated as Jaiswala)

All R/o Village Odari, Police outpost-Wardrafnagar, (wrongly stated as Wardnagar) P.S. Basantpur, District Balrampur-Ramanujganj Chhattisgarh

-----Appellants

VERSUS

- State of Chhattisgarh through: Police Station Balrampur (AJAK), District Balrampur-Ramanujganj Chhattisgarh

-----Non-applicant

For Appellants	: Mr. A.K. Prasad, Adv.
For Non-applicant- State	: Mr. Vimlesh Bajpai, Govt. Adv.
For Complainant	: Mr. Shakti Raj Sinha, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge**ORDER ON BOARD****13/09/2021**

1. This appeal under Section 14 of the SC & ST (Prevention of Atrocities Act) 1989 arises out of rejection of application *vide* order dated 27.07.2021 filed under Section 438 of CrPC in connection with crime bearing no. 38/2020, registered at Police Station- AJAK, Balrampur, District Balrampur-Ramanujganj, Chhattisgarh, for offence defined under Sections 294, 506, 186 r/w 34 of IPC and Section 3(1)(r)&(s) of SC/ST Act, 1989.
2. As per the case of prosecution, on 27.07.2020, appellant 1 entered into the Panchayat office of Panchayat Bhawan, demanded money from complainant and on refusal of complainant, appellant 1 abused

him, threatened him and also caused interruption in the proceedings of Panchayat work. Subsequently, other two appellants who are sons of appellant 1 also rushed to Panchayat office and all of them abused the complainant by his caste. Written report was lodged on the very same day and FIR was registered on 30.07.2020 against appellants for the aforementioned offence.

3. Mr. A.K. Prasad, learned counsel for the appellants submits that from bare reading of contents of FIR, offence as alleged against appellants would not be made out. He submits that as per the allegations levelled by complainant the said incident took place inside the panchayat office of Panchayat Bhawan and for attracting offence as alleged against appellants under Section 3(1)r) & (s) place of incident to be any place within public view which is not apparent from the contents of FIR. He further submits that complainant himself has executed an affidavit on 08.04.2021 (Annexure A-2) before the Notary mentioning therein that appellants have not abused him by his caste or intimidated him in any manner and the report has been lodged by him in aggression. He submits that when prima facie case itself is not made out and from the contents of affidavit executed by complainant himself admitting that false allegations have been levelled, Bar under Section 18 of the SC/ST Act would not be attracted.
4. On the other hand, Mr. Vimlesh Bajpai, learned State counsel opposes the submissions made by learned counsel for the appellants and submits that immediately after the incident written report was lodged to the concerned police station and subsequently FIR was registered based on the written report. There is allegation that appellants have abused complainant by his caste when he was

discharging his duties of Sarpanch and threatened him as well. However, upon putting specific question with regard to place on incident, upon going through the case diary, learned counsel submits that place of incident is inside panchayat office.

5. Mr. Shakti Raj Sinha, learned counsel along with complainant who is present in person before this Court, upon instruction and going through Annexure A-2, submits that complainant has executed affidavit. Upon pointing out to the contents of paragraph 3 of the affidavit, on instruction, he submits that complainant has admitted the said fact in the affidavit.
6. I have heard learned counsel for the respective parties.
7. From the contents of FIR and allegation made therein and the submissions made by learned counsel for the parties, it is apparent that the incident took place inside the Panchayat Bhawan ie. Panchayat office and not in public view, hence, prima facie, the alleged offence, if any, would not be attracted against appellants. For attracting provisions of Section 3(1)(r) & (s) of the SC/ST Act place of incident should be any place in public view but it is not the allegation in the present case. Further the complainant himself has executed an affidavit, copy of which is placed before this Court as well stating the allegation of abusing by caste to be false. Hon'ble Supreme Court in the case of ***Prathvi Raj Chauhan v. Union of India and others*** reported in **(2020) 4 SCC 727** has considered the issue with regard to considering application for grant of anticipatory bail by High Court in exceptional circumstances including the false implication of accused therein.
8. Considering the overall facts and circumstances of the case, I am of

the view that Bar under Section 18 of the SC/ST Act would not be attracted in the facts of the case and anticipatory bail application can be considered.

9. Having this in mind, the impugned order passed by Court below is not sustainable and it is hereby set aside, I am inclined to allow the appeal. Accordingly, appeal is allowed and it is directed that in the event of arrest of appellant in connection with the crime in question (38/2020), appellants shall be released on anticipatory bail by the Officer arresting them on their executing a personal bond in the sum of Rs. 25,000/- each with surety in the like sum to the satisfaction of the concerned arresting Officer. Appellants shall also abide by the following conditions:

- (i) that the appellants shall make themselves available for interrogation before the Investigation Officer as and when required;
- (ii) that the appellants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- (iii) that the appellants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the appellants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Sd/-
(Parth Prateem Sahu)
Judge